

# **EXHIBIT 5**

CS 15-4986  
Parish

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT

OKLAHOMA COUNTY

OCT 14 2015

TIM PHOENIX  
COURT CLERK

37

FRANCIS F. MERLISS and JILL  
MERLISS,

Plaintiffs,

v.

Case No:

CJ

2015 - 4986

CSAA FIRE & CASUALTY  
INSURANCE COMPANY,

Defendant.

**JURY TRIAL DEMANDED**

PETITION

COME NOW the Plaintiffs, Francis F. Merliss And Jill Merliss, and for their cause of action against Defendant, allege and state:

1. Plaintiffs, Francis F. Merliss and Jill Merliss insured their home with AAA Fire & Casualty Insurance Company and the policy was in force at all times material hereto.

2. AAA changed its name to CSAA Fire & Casualty Insurance Company (CSAA).

3. On December 25, 2014, Plaintiffs home was damaged by a loss covered by CSAA's insurance policy.

4. Plaintiffs submitted a claim for damages to Defendant, made the premises available for inspection by Defendant's adjusters, cooperated in the limited investigation that Defendant performed and otherwise complied with all conditions precedent to recovery under the subject insurance policy.

5. Defendant breached the insurance contract and the implied covenant of good faith and fair dealing as a matter of standard business practice, in the following respects:

- a. failing and refusing payment of all covered damage and other policy benefits on behalf of Plaintiffs at a time when Defendant knew that they were entitled to those benefits;
- b. failing to properly investigate Plaintiffs' claims and to obtain additional information both in connection with the original refusal and following the receipt of additional information and refusing reinspection;
- c. withholding payment of the full benefits due Plaintiffs knowing that Plaintiffs' claims for those benefits were valid;
- d. refusing to honor Plaintiffs' claims in some instances for reasons contrary to the express provisions of the policy and/or Oklahoma law;
- e. refusing to honor Plaintiffs' claims in some instances by applying restrictions not contained in the policy;
- f. refusing to honor Plaintiffs' claims in some instances by knowingly misconstruing and misapplying provisions of the policy;
- g. failing to adopt and implement reasonable standards for the prompt investigation and reasonable handling of claims arising under these policies, to include Plaintiffs' claims;
- h. not attempting in good faith to effectuate a prompt, fair and equitable settlement of Plaintiffs' claims once liability had become reasonably clear;
- i. forcing Plaintiffs, pursuant to its standard claims practice, to retain counsel in order to secure benefits Defendant knew were payable;
- j. failing to properly evaluate any investigation that was performed;
- k. refusing to consider the reasonable expectations of the insured;
- l. failing and refusing to properly investigate and consider the insurance coverage promised to their insured;
- m. underpaying the insurance benefits;
- n. refusing to pay for destructive testing authorized by its adjuster;

all in violation of the implied covenant of good faith and fair dealing and resulting in financial benefit to the Defendant.

6. As a direct result of the above described wrongful acts and omissions by Defendant, Plaintiffs has suffered loss of the coverage promised by Defendant, mental and emotional distress and embarrassment.

7. Defendant's acts and omissions were willful and malicious or grossly reckless and wanton and Plaintiffs are entitled to recover punitive damages.

**WHEREFORE**, Plaintiffs pray for judgment against the Defendant, CSAA Fire & Casualty Insurance Company, for compensatory and punitive damages, with interest and costs of this action, for a reasonable attorney fee, and for such other relief as may be appropriate. The amount sought as damages in in excess of the amount required for diversity jurisdiction pursuant to §1332 of Title 28 of the United States Code.

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**JURY TRIAL DEMANDED  
ATTORNEY LIEN CLAIMED**

**ATTORNEYS FOR PLAINTIFFS**